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October 16, 2012

By E-Mail: [jmcdon2@co.pierce.wa.us](mailto:jmcdon2@co.pierce.wa.us)

Councilmember Joyce McDonald  
Council Chair  
Pierce County Council  
930 Tacoma Ave. S., Room 1046  
Tacoma, WA 98466

RE: Proposed amendment to Ordinance No. 2012-77 - An Ordinance of the Pierce County Council Amending Chapter 1.28 of the Pierce County Code, "Rules of Procedure - Pierce County Council" and concerns in opposition to proposal

Dear Chair McDonald:

The following constituents from Pierce County oppose the language presently proposed in Ordinance No. 2012 - 77 set forth in Exhibit A at Page 14 of 19 Line 42 that amends PCC 1.28.180 to add a new section describing the appointment process for District Court Judges. We oppose Ordinance No. 2012-77 because the current process set forth in Resolution No. R2003-22 complies with the statutory requirements of RCW 3.34.100, wherein the legislative authority shall fill all vacancies by appointment, and because the existing process has historically worked well. We recommend the Council reject the proposed process and instead enact a simple affirmation that there be a procedure. Then, we recommend the procedure remain as currently described in Resolution No. R2003-22.

Proposed amendment to Ordinance No. 2012-77:

At page 14 Line 42 Strike the entire section through to Page 15 Line 16 and substitute the following language:

C. ~~Within 60 days of the occurrence of any vacancy in Pierce County District Court, the County Council will place an announcement of the ....following all applicable rules~~

~~and requirements.~~ The Council shall adopt procedures to provide initial screening of applicants for Council appointment to any vacant District Court judicial position.

The language proposed in Ordinance 2012-77 changes the process historically used by the County for appointment of its district court judges. The changes are significant changes that negatively impact the impartiality of the process and limit the information and options made available to the Council when making its final selection.

The current process spelled out in Resolution 2003-22 calls for agreement on no less than three and no more than five candidates for review and rating by the Tacoma-Pierce County Bar Association's Judicial Qualifications Committee. The new proposed ordinance allows for the selection of one candidate for consideration by the Council and no requirement that any candidate be screened through the local bar association process, thus limiting the background information on the candidate. This includes information about how the candidate is perceived among his or her peers, which can provide insights not otherwise readily available to the Council.

The new ordinance changes the membership of the ad hoc committee:

Resolution R2003-22 (6 Members)

Presiding Judge PC  
District Court

Legal Counsel to the PC Council

*President of the TPCBA*

*Chair of the TPCBA Judicial Qualifications  
Committee*

*Representative from the Washington State  
Office of the Administrator for the Courts*

*Representative from the Minority Bar Association  
of PC*

Ordinance No. 2012-77 (5 Members)

Presiding Judge PC  
District Court

Legal Counsel to the PC Council

*PC Prosecuting Attorney*

*Director of the Department  
Assigned Counsel*

*Director of the Crystal Judson  
Family Justice Center*

The first notable objection to the new ad hoc committee is the substitution of a majority of judicial branch officers identified in the Resolution with a majority of officials from Pierce County who receive their compensation from the Pierce County executive branch of government. Transferring power to County officials heightens the risk of bias and undue influence. The involvement of the local bar association, minority bar association, and the Chair of the Judicial

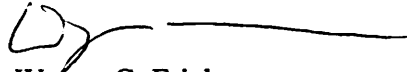
Qualifications Committee invites diverse input and independence from County executive branch considerations.

The second notable problem is the appearance of fairness issue that necessarily arises when a candidate applies from the prosecutor's office. The prosecutor should recuse him or herself then from any participation as to that candidate. If there is also a candidate from Assigned Counsel, then the Director must also abstain. That would mean three of the five would be making a recommendation. The officials involved in the current Resolution represent a large diverse body of lawyers who use the court system. These officials are beholden to their memberships that include both prosecutors and defense attorneys. Neither the Prosecutor nor Director of DAC, unlike the President of the TPBA or the Minority Bar Association, has to answer to a board or members that would require either to be objective. Instead both have a vested interest in identifying a candidate who shares their individual visions of district court justice. Thus, the Council does get any value added expertise. Councilmembers can get the opinions of the Prosecutor and DAC Director on any candidate by making a phone call. They do not need to have their representation on the ad hoc committee. Instead, the Council would be well served by formalizing a process to get outside input on the candidates, which is indeed the process it currently has in place.

There is an additional resource for the Council that should be considered that neither the Resolution nor the proposed Ordinance mentions. Under the authority of state statute, there is an Association known as the Washington State District and Municipal Court Judges' Association. RCW 3.70.010. The duties of the Association include surveying and studying the operations of the courts by its membership. RCW 3.70.040. Its members are the experts on what district court requires of its judges. We recommend including the President of that organization on any selection panel. The current President is the Honorable Sarah Derr of Spokane District Court who may be reached at 509-477-2959. She is familiar with the processes used in other counties for the selection of candidates for judicial appointment to district court.

Thank you for your courtesies in this regard. We encourage you to reject the proposal before you and stay with the current process, with the possibility of including a representative from the Association.

Very truly yours,



Wayne C. Fricke  
*See attached for additional  
list of supporters*

WCF:lam

cc: Councilmembers

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Chair of TPCBA Judicial Qualifications Committee

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## Pierce County

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District Court  
930 Tacoma Ave S Room 239  
Tacoma, Washington 98402

October 17, 2012

Joyce McDonald, Chair  
Pierce County Council  
930 Tacoma Avenue South, Room 1046  
Tacoma, WA 98402

Dear Council Chair McDonald:

We write to express our concerns about proposed Ordinance No. 2012-77, and specifically the proposed changes to Section 1.28.180 of the Pierce County Council Rules of Procedure outlining a new process for appointments to vacant District Court positions.

The existing process for filling a District Court judicial vacancy by appointment, adopted by the Council in 2003 (Resolution No. R2003-22), calls for an Ad Hoc Committee to review all applications received. That Committee then submits no less than three and no more than five names to the Tacoma-Pierce County Bar Association's Judicial Qualifications Committee (JQC) for its review and rating. The JQC then forwards its ratings to the Clerk of the Pierce County Council on an agreed-upon timeline. The current composition of the Ad Hoc Committee is as follows:

1. President of the Tacoma-Pierce County Bar Association;
2. Presiding Judge of Pierce County District Court;
3. Chair of the Tacoma-Pierce County Bar Association's Judicial Qualifications Committee;
4. Representative from the Washington State Administrative Office of the Courts;
5. Representative from the Minority Bar Association of Pierce County; and
6. Legal Counsel to the Pierce County Council.

By contrast, the proposed changes to Sec. 1.28.180 call for the Rules Committee to appoint an Ad Hoc Committee to review all applications for vacant District Court positions. The Ad Hoc Committee is to select no more than five names of qualified candidates to submit directly to the Council, without any involvement by the Judicial Qualifications Committee.

As proposed, the Ad Hoc Committee would instead consist of:

1. Presiding Judge of Pierce County District Court or designee;
2. Pierce County Prosecuting Attorney or Deputy Prosecuting Attorney;
3. Director of the Department of Assigned Counsel or designee;



4. Director of the Crystal Judson Family Justice Center; and
5. Legal Counsel to the Pierce County Council.

We see no compelling reason to change the existing process. It was carefully crafted after substantial deliberation, and has operated effectively and efficiently to yield well-qualified appointments to the District Court bench. Most importantly, the current Ad Hoc Committee is representative – both in fact and in appearance – of the diverse community which the District Court serves.

Our concerns about the proposed process are as follows:

First, and most importantly, on its face the proposed process appears biased because the Ad Hoc Committee is not representative of the diverse community which the District Court serves. The failure to include any representatives from the Bar Association, its Judicial Qualifications Committee or the Minority Bar Association, effectively excludes a large community of District Court stakeholders.

Second, the proposed process creates an inherent conflict of interest concerning any potential candidates employed by either the Prosecutor or Department of Assigned Counsel. Historically, there are candidates from one or both of these offices seeking appointment. In order to ensure the integrity of the process, neither the Prosecutor nor DAC should participate in the decision-making process for any candidates from their respective offices.

Third, the Prosecutor and DAC only have an interest in criminal cases. Such cases represent only a portion of the entire District Court caseload, which also includes a large number of civil and infraction cases. A significant number of the hearings held in District Court do not involve either a prosecutor or DAC attorney. The Committee as proposed represents only a portion of the attorneys who appear daily in District Court.

Fourth, the Bar Association's Judicial Qualifications Committee is broadly representative of the community, and was created specifically for the purpose of ensuring the appointment or election of the best candidates for the judiciary. In the existing process, the Committee also plays the important role of rating the candidates before presentation to the Council.

Finally, including a representative from the Administrative Office of the Courts (AOC) brings an independent perspective and unique state-level expertise on the courts to the process. Moreover, the AOC's only interest is to ensure the quality of judicial appointments statewide.

As of this writing, we understand the proposed process has already been amended to remove the Director of the Crystal Judson Family Justice Center from the Ad Hoc Committee.

We hope the concerns expressed above will help the Council see that the proposed changes to the District Court appointment process are neither necessary nor well-advised. In fact, the proposed changes risk creating fundamental problems in the appointment of District Court judges that do not exist in the current process. We strongly urge the Council to leave the current structure and process in place. It has served the Court, the legal community and the citizens of Pierce County very well.

Sincerely,



Hon. Pat O'Malley, Presiding



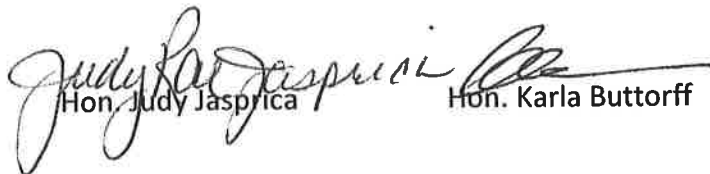
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Hon. James Heller



Hon. Jack Nevin



Hon. Judy Jasprica

Hon. Karla Buttorff



Hon. Frank Dacca



Hon. Claire Sussman

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